PART IV

Section—2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Mysore Electrical Industries Ltd., Bangalore. –

Award of the Labour Court, Bangalore published.

Read the following papers :

(1) Letter No. 221/71-72 dated 7th May 1971 from Sri A. N. Sundara Murty, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER LABOUR COURT BANGALORE.

Dated 7th day of April 1971.

Present :

Sri A. N. Sundara Murthy B.A., B.L., Presiding Officer.

Reference No. 35 of 1967.

The Workmen of the Mysore Electrical Industries, Ltd., Bangalore-2.

... ... *I Party.*

Vs.

The Management of Mysore Electrical Industries Ltd., Bangalore-2

... ... *II Party*

Appearances.

For the I Party:—Sri M. C. Narasimha, Secretary K. P. T. U. C., Bangalore.

For the II Party:—Sri B. R. Puttanaŋjappa, M.A.LL.B., Honorary Secretary, Mysore State Employers' Association, Bangalore.

Reference

Government Order No. LMA 98 LLD 67 dated 17th March 1967.

AWARD.

The Government of Mysore in their Order No. LMA 98, LLE 67, dated 17th March 1967 have reffered the Industrial Dispute between the workmen and the Management of Mysore Electrical Industries Ltd, Bangalore-22 to this Court for adjudication in exercise of the powers conferred under Clause 'C' of Sub section (1) of Section 10 of the Industrial Disputes Act, 1947.

The points of Disputes are:—

"1 (a) Is the management of Mysore Electrical Industries Ltd., Bangalore, justified in dismissing from service Sri P. H. Habib, Card No. 551?

(b) If not to what relief is Sri P. H. Habib entitled?

2. On behalf the I Party, claim statment is filed as follows:—

The I Party, P. H. Habib, joined service under the II Party as a Machinist in their Factory at Rajajinagar, Bangalore, in the year 1963. His services were terminated as per Memo dated 24th February 1965. He was given a Memo dated 9th November 1964 wherein certain allegations of misconduct were made. An enquiry was held into the charges after show cause notice dated 18th November 1964. The dismissal order dated 24th February 1965 is illegal and *malafide* and is liable to be set aside on the following grounds:—

(a) That the so-called enquiry held in the case, suffers from serious infirmities and is opposed to principles

of natural justice and that no reasonable opportunity was given to Sri Habib to defend himself.

(b) That the order of dismissal is not based on good faith and is malafide;

(c) That the workman concerned is not guilty of the charges/allegations made against him.

(d) That the order of dismissal is perverse and the concerned workman has been victimised for his trade union activities.

(e) That the allegations made do not disclose a misconduct under the Standing Orders/rules applicable and that at any rate the alleged misconduct has nothing to do with the working of the factory.

(f) That the second party has maliciously taken advantage of the fact that Sri Habib is associated with sponsoring a new Trade Union and is connected with the Union quite different from the one patronised by the II Party.

(g) That the witnesses for the second Party were ill-disposed towards Sri Habib, as some of them belonged to a hostile group, and that the decision of the Second Party based on such evidence is not *bona fide*.

It is prayed that the dismissal order passed against the I Party may be set aside and he may be reinstated with backwages.

3. On behalf of II Party, rejoinder is filed as follows:—

The dispute relating to the dismissal of the I Party workman, Sri P. H. Habib is only an individual dispute which has not been transformed into an industrial dispute. The dismissal took place long before the amendment of the Industrial dispute Act by adding Section 2-A. The Mysore Electrical Industries Union which has sponsored the present dispute, was not even in existence when the I Party workman was dismissed from service. What is referred to is only an individual dispute and that this Court has no jurisdiction to adjudicate upon the same. The order of dismissal was issued on 24th February 1965. The claim for reinstatement is quite belated and stale. Hence the reference should be rejected on the said ground also. It is prayed tha the above said two issues may be treated as preliminary Issues. It

is stated that the claim of the first party is untenable even on merits. Charges of mis conduct were levelled against the I Party workman stating that on 23rd October 1964 he obtained a Pass out on false pretext, stood outside the main gate of the factory, prevented some of the staff members from going home, coercing them to join the Trade Union Meeting and also indulged in intimidation and assault of staff Officials with a flag staff which he was holding. He was kept under suspension pending enquiry. An elaborate enquiry was held. The I Party workman fully participated in the enquiry. He was given full opportunity to put his defence including having on observer of his choice. After considering the evidence let in on behalf of both sides, the Enquiry Officer gave the finding that all the charges were proved in the enquiry. The Managing Director accepted the findings of the Enquiry Officer and as he did not find any mitigating circumstances, ordered the dismissal of the I Party workman from service on each of the charges. The dismissal was fully justified. The Model Standing Orders framed by the Government of Mysore are applicable to the establishment as it employs more than 100 workmen. The punishment warranted for acts of misconduct is dismissal without notice or any compensation in lieu of notice under Model Standing Order No. 15 (2). The contentions urged on behalf of the I Party-workman stating that the enquiry is opposed to principle of natural justice that no reasonable opportunity was given that the dismissal is not based on good faith and is *malafide*; the workman concerned is not guility of the charges levelled against him that the order of dismissal is perverse, he was victimised; the management was influenced by his misconduct and not by his Trade Union activities are denied. It is denied that the witnesses at the enquiry were ill disposed towards the I Party workman. It is prayed that the reference may be rejected.

4. On behalf of the I Party, a reply statement is filed as follows :—

It is denied that this court has no jurisdiction, It is pleaded that it is not correct to suggest that Section 2-A of the Industrial Disputes Act is not operative. It is denied that the dispute relating to the I Party workman is not an Industrial Dispute. It is pleaded that the dispute was been properly raised It is denied that the Mysore Electrical Industries Workers' Union was not in existence. It is denied that the I Party workman obtained a pass put on false pretext or standing outside the main gate on 23rd October 1964, It is denied that he prevented some of the

staff members from going home and that he coerced them to join the Trade Union Meeting and that he intimidated them with a flag staff. The Managing Director has not taken all the circumstances into account. The other averments made in the claim statement are reiterated.

5. The following Issues are framed :—

"1. Whether the referred dispute is an Industrial dispute ?

2. Are the findings recorded in the domestic enquiry and the impugned order based on them liable to be set aside on any of the following grounds :—

(i) the management was guility of lack of *bona fides* ;

(ii) the management was precepted by a spirit of victimisation or unfair labour practice ;

(iii) the management was guility of offending principles of natural justice at or during the enquiry.

(iv) the findings recorded and the order passed at the enquiry are grossly erroneous or perverse ;

3. What Award."

6. on 17th July 1968, both the parties submitted that in spite of recording evidence piecemeal, evidence may be recoried on all the Issues, and it is ordered accordingly.

7. The first point for consideration is whether the dispute referred to is an industrial dispute.

According to the II Party, the dispute relating to the dismissal of the I Party-workman is only an individual dispute which has not been transformed into an industrial dispute the dismissal took place long before the amendment of Industrial Disputes Act, 1947, by adding Section 2-A. The Mysore Electrical Workers Union which has sponsored the present dispute was not even in existence when the I Party workman was dismissed from service. Hence this Court has no juridiction to adjucate upon the same On behalf of the II Party, the following decisions are relied upon :—

(i) 1958 (II) LLJ 290

(ii) 1961 I LLJ 77, and

(iii) 29 FJR 122.

On behalf of the I Party-workman it is admitted that on the day when the I Party workman was dismissed from service the I Party Union which sponsored his cause was not in existence. The Bangalore District Engineering Workers' Union espoused the cause of the workman on 5th August 1965 and passed a resolution as per Ext. W. 2 (b). Hence an industrial dispute arose. It is urged on behalf of the I Party what is necessary is whether prior to the date of reference the dispute was sponsored by the Union or substantial number of workers of the Establishment. According to the I Party, that even though the I Party Union was not in existence on the date when the service of the I Party workman were terminated, the I Party Union was formed letter on by the majority of the workmen working in the II Party-Establishment and the I Party Union thereafter sponsored the cause of the I Party workman. The test is whether the dispute had been sponsored by the Union on the date of the reference. According to the I Party, on the date of the reference, the I Party Union was in existence. Hence the individual dispute had been converted into an industrial dispute and the reference is valid.

on behalf of the I Party, the following decisions are cited :

(i) 1949 I LLJ 245

(ii) 1958 I LLJ 500

(iii) 1960 II LLJ 37

(iv) 1962 I LLJ 409

(v) 1962 II LLJ 634

(vi) 1967 II LLJ 663

vii) 1967 II LLJ 222

(viii) 1968 II LLJ 514

(ix) 1968 II LLJ 580

(x) 1961 II LLJ 436

Now the decisions cited on behalf of the II Party may be taken up for consideration.

In 1958 II LLJ 290 (Padarthy Ratnam and Co *vs* Industri Tribunal and others) the respondents 2 to 4 admittedly no

members of a trade union on the date when their employment was terminated. In the said decision, it is laid down as follows :—

> "On a consideration of the relevant provisions of the Act and the decided cases, I am led to conclude that the membership of the Union, which would give it jurisdiction to espouse their case, must be one anterior to the date of the dismissal and not subsequent to it."

In 1961 I LLJ 77, (Shamsuddin and State of Kerala and others) the Appellant challenged the legality of the award on several grounds. One of these is that the dispute could not be referred to the Tribunal as the quarrel was between individual workers and the employer these being no union to which the dismissal employees were Members at the time they were dismissed. The matter at the first instance, came before a single Judge. The learned Single Judge dissented from the views taken in 1958 II LLJ 290. The learned Single Judge has held that the test of having community of interest would be satisfied if at the stage the dispute develops into an industrial dispute, there be an union sponsoring the cause of the aggrieved Union as its Member. In the above decision, 1961 I LLJ 77, the said view of the Single Judge was not accepted. In the said decision, it is laid down that the community of interest between the aggrieved party and his association must be in existence at the time the event causing the dispute had happened, In the said decision, the decision of the Supreme Court in 1953 I LLJ 195 at 199 is cited :—

> "by the trade union of which he is a member and there is a concerted demand by the employees foredress."

In the said decision, 1961, I LLJ 77, it is observed :

> "We think the membership referred to in the aforesaid observation, means one existing at the time the act complained against had happened and not one springing after a gap....."

In 29 FJR 122, the concerned workman became a Member of the Union after the date of dismissal. In the said case, the Tribunal came to the conclusion that since the workman had become a member of the Union after his services had been terminated, the Union cannot espouse the cause of the workman and the dispute was not an industrial dispute. The learned Single

Judge of the Punjab High Court has upheld the said view of the Tribunal. An appeal had been preferred against the said decision. In the appeal it was contended on behalf of the Appellant, that to ascertain whether the dispute was an individual dispute or had acquired the character of an industrial dispute, the test is whether on the date of the reference the dispute was supported by the union of workmen or by an appreciable number of employees of the establishment in which the dismissed workmen was formerly employed. On behalf of the Appellant, the decision of the Supreme Court in 1962 I LLJ 40-21 FJR 207 was relied upon. In the abovesaid decision *viz.*, 29 FJR 122, the principles laid down in 1958 II LLJ 290, 1961 I LLJ 77 referred to above were sought to be distinguished. In the above said decision, considering the principles laid down in all the decisions referred to above, it is held that an individual dispute can become an industrial dispute only if the cause of an individual worker is espoused by an Union of which such worker was a Member on the date of dismissal. The fact that he became a Member after the dismissal will be of no avail to him.

8. Now the decisions cited on behalf of the I Party-workman may be considered. It will be convenient to take up for consideration at the first instance, the following decisions cited on behalf of the I Party.

In 1949 I LLJ 245, (Western India Automobile Association *vs*-The Industrial Tribunal, Bombay and others) it is laid down as follows:

> "that any dispute connected with employment or non-employment would ordinarily cover all matters that require settlement between workmen and employers, whether those matters concern the causes of their being out of service or any questions, and it would also include within scope the reliefs necessary for bringing about harmonious relations between the employer and the workers; and if non-employment arises by reason of termination of employment by the employer, it will be within the jurisdiction of the Tribunal to determine whether the termination was justifiable."

In 1958 (I) LLJ 500, Workmen of Dimakuchi Tea Estate *vs* Dimakuchi Tea Estate), it is laid down as follows:—

> "Having regard to the scheme and objects of the Act, and its other provisions, the expression "any person" in S 2(k)

of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are:

1. the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving;

2. the person regarding whom the dispute is raised must be one in whose employment, non-employment terms of employment or conditions of labour (as the case may be), the parties to the dispute have a direct or asub stantial interest.

In the absence of such interest the dispute cannot be idss to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest."

In 1967 II LLJ 222 (Muller and Phipps (India) (Private) Ltd., -*vs*-Their Employees, Union and others) on behalf of the Petitioner, it was contended that the cause of the retrenched employee for re-employment under Section 25 (H) could not be espoused by his fellow workmen. In the said case, it is held that he said contention is untenable and it is held that it cannot be said that the Union had no direct or substantial interest in the re-employment under Section 25 H of respondent 2 who had been earlier retrenched.

From the perusual of the principles laid down in the abovesaid decisions, it will be seen that they are not applicable to the facts of the reference under consideration and hence the above said decisions are not helpful to the I Party workman.

On behalf of the I Party, as referred to above, 1968 II LLJ 514 is cited.

When the said page is looked into, it is seen that there is no decision which starts supporting the case of the I Party workman.

9. The next set of decisions cited on behalf of the I Party workman will be taken up for consideration.

In 1960 (II) LLJ 37 (Newspapers, Limited, Allahabad *vs.* State Industrial Tribunal, Uttar Pradesh and others), it is laid down as follows:—

> "It is not necessary that a registered body should sponsor a workan's case to make it an industrial dispute. Once it is shown that a body of workmen, either acting through their Union or otherwise, had sponsored a workman's case it be comes an industrial dispute."

In 1961 II LLJ 436, (Bombay Union of Journalists and others -*vs*- The "Hindu" Bombay and others), It is laid down as follows:—

> "In each case in ascertaining whether an individual dispute has acquired the character of an individual dispute, the test is whether at the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen."

On behalf of the I Party-workman, great stress is laid on the principles laid down in this decision.—

In 1962 I LLJ 400, relying on the abovesaid decision of the Supreme Court in 1961 II LLJ 436, it is laid down as follows:

> "The validity of a reference must be judged on the facts as they stand on the date of reference. A withdrawal of the support by a union after a reference is made cannot render it invalid. Likewise the support by it after the date of reference cannot make it valid."

In 1962 (I) LLJ 634 (Workmen of Rohtak General Transport Company) and Rohtak General Transport Company relying on the above siad Supreme Court decision *viz.* 1961 (II) LLJ 436, it laid down as follows:

> "The real test to decide such question would be "had the dispute been sponsored by the workmen before it was referred for adjudication?"

In 1967 II LLJ 663, the decisions cited on behalf of the II Party are referred to. The decision in 1958 II LLJ 290 and 1961 I LLJ 77 are referred to and distinguished. Decision in 1966 II LLJ 261 is also referred to but it is observed as follows:

> "But a careful scrutiny of the judgment would not support the contention raised by Sri Balbhadra Prasad Singh for the opposite party. There, it was alleged that the dismissed workman became a member of the union after the date of his dismissal, and that his cause was espoused by that union prior to the date of reference by the Government., Their Lordships, however, held that they were bound by the finding of fact of the single Judge that there was nothing to show that the cause of the individual workman was taken by a union before the date of reference. To quote their own words at p. 264.
>
> "In the absence of any finding even by the tribunal we will not venture to give one for the first time in the Letters patent Appeal."
>
> It is true that, in the subsequent paragraph (P. 264), they expressed their agreement with 1958 II LLJ 290 (already cited) but took care to leave open the question which is of vital importance here, by the following words.
>
> "We might make it clear that in view of the limited scope of the arguments raised before the learned single Judge we are expressing no opinion as to whether it will make any difference if the cause had been taken up by a union of the workmen of the establishment in which the dismissed employee was employed."

Thus, this decision has expressly left open the very question which arises for consideration here, and it cannot be of any help to the company."

In 1967 II LLJ 663 the decision of the Supreme Court 1961 II LLJ 435 is also relied upon. In the said decision it is held as follows:—

> "that, in view of the principles laid down by their Lordships of the Supreme Court themselves, as pointed out above and the words of caution uttered by them in 1965 I LLJ 668 at 673, there is no principle which can jusify the view that, even though a union, consisting of the employees under the same establishment, sponsored the cause of the dismissed workman, the dispute did not become an industrial dispute merely because the union came into existence after the date of his dismissal."

According to the counsel for the I Party, in this decision, the decisions cited on behalf of the II Party are also referred to and distinguished. Hence relying on the principles laid down in the above said decision, it will have to be held that this reference is valid. In the above said decision, the workman had become a Member of the Union which sponsored his case even before his services, were terminated. Thus it is seen that the facts concerned in the above said decision are different from the facts concerned in this reference.

In 1968 II LLJ 280 (Suman Verma (Manager, Nava Bharath *-vs-* Nava Bharat Karamachari Sangh (Through its secretary and others,) it is laid down as follows:—

> "Once it is shown that a body of workmen, acting through their union or otherwise, has sponsored a workman's case, it becomes an iddustrial dispute."

10. From the several of the Supreme Court decisions referred to above, it would be seen that an industrial dispute could arise if the cause of the concerned workman is sponsored by the Union or substantial number of the establishment. In the above said decisions of the Supreme Court, the issue which is under consider-

ation in this reference did not arise substantially. I am satisfied with the princ ples laid down in the abovesaid decisions cited on behalf of I Party workman are not applicable to the facts of this reference. Agreeing with the principles laid down in 1958 II LLJ 280 1961 II LLJ 77, 1965 I LLJ 66. I hold that the dispute relating to the dismissal of the I Party workman is only an individual dispute and has not been transformed into an industrial dispute a pleaded on behalf of the II Party. Hence I hold that the reference is not valid and this court has no jurisidiction.

11. In view of this finding, it is not necessary to give findings on other Issues.

12. In the result, the reference is rejected, with no costs.

A. N. SUNDARA MURTHY,
7-5-71

Presiding Officer,
Labour Court, Bangalore.